

RESOURCE GUIDE FOR USE OF INTERPRETERS IN CHILD ABUSE PROCEEDINGS

Introduction

The Children's Law Center prepared this resource guide for lawyers, child protection workers, children's advocacy center workers, and others involved in the investigation and prosecution of child abuse cases in which the victims require an interpreter. Victims of child abuse who require an interpreter may have English as a second language or have a speech or hearing impairment. The Children's Law Center prepared this resource guide in collaboration with the South Carolina Children's Justice Act Task Force.

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Interpreters Generally

Interpreters may be needed during both the investigation and trial of family court child protection proceedings and of criminal prosecutions of child abuse and neglect. Interpreters may be needed for witnesses and for parties who have English as a second language or for witnesses and parties who have hearing impairments.

The Preamble to Rule 511 SCACR recognizes that people who have English as a second language and people who have hearing impairments should be afforded equal access to justice. South Carolina statutes, rules of procedure, and South Carolina Supreme Court orders facilitate access to justice for people with English as a second language and for people with hearing impairments.

What Is an Interpreter

An interpreter is a person who translates from one language to another. In the legal context, an interpreter is a person who accurately translates the testimony of a witness who has English as a second language or who is hearing impaired. An interpreter may interpret in a number of ways including:

- simultaneous interpretation when the interpreter simultaneously translates a speaker's statements to another language without waiting for the speaker to complete a statement.
- consecutive interpretation when the interpreter waits for a speaker to complete a statement and then translates the statement to another language.
- unidirectional interpretation when the interpreter translates from one language and not back to the original language (for example, an interpreter translates a child's Spanish statements to English).
- bidirectional interpretation when the interpreter translates from one language to another and then back to the original language (for example, an interpreter translates a child's Spanish responses to English and then translates questions for the child from English to Spanish).

Civil Proceedings: English as a Second Language

In civil proceedings, including family court abuse and neglect proceedings, S.C. Code Ann. § 15-27-155 authorizes the court to appoint a qualified interpreter (complete statute set forth in the appendix to this resource guide). The statute allows the court to appoint a qualified interpreter to interpret the proceedings and the testimony of a party or a witness when the party or witness does not sufficiently speak the English language to testify. A court may waive the use of an interpreter if the court finds that an interpreter is not necessary for the fulfillment of justice. Should a court decide that waiver is appropriate, the court must make findings on the record that waiver of a qualified

interpreter is in the best interest of the party or witness and that waiver is in the best interest of justice.

Under S.C. Code Ann. § 15-27-155, an interpreter is a person who is: eighteen years of age or older; not a family member of the party or witness; and an instructor of foreign language at an educational institution or who has educational training or experience that enables the person to fluently speak a foreign language and interpret the language of another person. The statute prohibits a person confined in an institution from being an interpreter.

The statute allows the South Carolina Supreme Court to establish guidelines for selection, use and reimbursement of interpreters. As to fees for interpreter services, the statute provides that fees may be: paid out of the general fund of the State from funds appropriated to the Judicial Department for the purpose of interpreter fees; paid by one or more of the parties as the court may direct; or taxed as costs in the discretion of the court. While the statute provides that the Judicial Department's Division of Court Administration shall maintain a centralized list of qualified interpreters, a party or witness may use a qualified interpreter not on the list so long as the interpreter meets the statutory definition of interpreter set forth above and submits an affidavit to the court specifying the interpreter's qualifications.

In addition to the provisions of S.C. Code § 15-27-155, Rule 43(f) SCRPC has the following provision for interpreters in civil proceedings:

(f) Interpreters. When a witness does not speak the English language sufficiently to testify, the court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

South Carolina Supreme Court Implementation of S.C. Code § 15-27-155

Pursuant to S.C. Code Ann. § 15-27-155, the South Carolina Supreme Court issued an Order on August 3, 2006, which amended the Court's May 20, 2004, Order providing procedures for appointment and for payment of interpreters appointed by a court in civil cases. With respect to fees, the August 2006 Order provides:

2. The court appointed certified or otherwise qualified interpreter shall receive payment of \$25.00 per hour, with a two-hour minimum, for interpreting services rendered. The fees for interpreting services may be: (a) paid out of funds appropriated to the Judicial Department by the General Assembly; (b) paid by one or more parties as the Court may direct; or (c) taxed ultimately as costs based on the discretion of the Court, with any fees over the \$25.00 per hour set by Order of this Court being the responsibility of the County. Effective September 1, 2006, the payment will increase to \$45.00 per hour for certified foreign language interpreters.

The Court's August 2006 Order also provided for forms with which to apply for interpreter's fees. Those forms are available on the Judicial Department's web site (Forms SCCA 262, 263 and 264 available at www.sccourts.org).

Foreign Language Interpreter Services in Magistrate and Municipal Courts

The South Carolina Supreme Court Order on telephonic language interpreter services in magistrate and municipal courts is dated February 10, 2003. The Order authorizes the use of telephonic foreign language interpreter services in magistrate and municipal courts. The telephonic foreign language services may be used for non-capitol initial appearances, bond hearings, preliminary hearings, and guilty pleas and must be used under the conditions set forth in the Order. The Order provides that the county or municipality shall bear all the costs associated with telephonic foreign language interpreter services.

Interpreters in Criminal Proceedings

S.C. Code Ann. § 17-1-50 provides for interpreters in criminal proceedings (complete statute set forth in the appendix to this resource guide). The statute requires the court to appoint a certified or otherwise qualified interpreter whenever a party, witness, or victim in a criminal proceeding does not sufficiently understand or speak English to comprehend or to testify. The court may waive use of either a certified or a qualified interpreter if the court finds that an interpreter is not necessary for justice. In order to waive use of an interpreter, the court must make findings on the record: that the waiver is requested by a non-English speaking party, witness, or victim; that the waiver has been made knowingly, voluntarily and intelligently; and that granting the waiver is in the best interest of justice.

S.C. Code Ann. § 17-1-50 defines a certified interpreter as a person:

(a) certified by the administrative office of the United States courts, by the office of administration for state courts, or by a nationally recognized professional organization; and

(b) eighteen years of age or older; not a family member of a party or a witness; not a person confined to an institution; and who has education, training, or experience that enables the person to speak English and a foreign language fluently, and the person is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a non-English speaking person or from that language into spoken English.

A qualified interpreter means a person who meets the qualifications set forth in (b) above but the person need not meet the certification requirement set forth in (a) above.

S.C. Code Ann. § 17-1-50 has provisions similar to those of S.C. Code Ann. § 15-27-155 discussed above concerning selection, use, and reimbursement of interpreters and concerning the Division of Court Administration's maintenance of a list of certified or otherwise qualified interpreters.

People with Hearing Impairments – Civil and Criminal Proceedings

S.C. Code Ann. § 15-27-15 provides for interpreters for people who are deaf and who are a party to or a witness in a civil or criminal proceeding, including a family court proceeding, a proceeding for a traffic violation, or a criminal matter in magistrates court (complete statute set forth in the appendix to this resource guide). The statute defines a deaf person as a person who cannot use his hearing for communication purposes. This resource guide uses the term “person with a hearing impairment” rather than the term “deaf person”.

An interpreter must be approved by the person with a hearing impairment and by either the South Carolina Association for the Deaf and the South Carolina Registry of Interpreters for the Deaf or the National Registry of Interpreters for the Deaf.

Pursuant to S.C. Code Ann. § 15-27-15, a qualified interpreter is a person: eighteen years of age or older; qualified by the South Carolina Association of the Deaf Interpreter Assessment Program (SCAD-IAP Level IV or V) or the National Registry of Interpreters for the Deaf; approved by the South Carolina Association for the Deaf; and is not a family member of the person with a hearing impairment.

A person with a hearing impairment may waive having a qualified interpreter and may use someone selected by the person with a hearing impairment. If the person with a hearing impairment elects to use a person other than one qualified pursuant to the statute, the court must determine that allowing the election is in the best interest of the person with a hearing impairment and is in the best interest of justice.

The statute allows the Chief Justice of the South Carolina Supreme Court to establish guidelines for selection, use and reimbursement of interpreters. The statute provides that all fees for interpreting services must be paid from the general fund of the State from funds appropriated by the General Assembly to the Judicial Department for the purpose of interpreters.

South Carolina Rule of Evidence (SCRE): Qualification of an Interpreter as an Expert

SCRE 604 provides, “An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or an affirmation to make a true translation.” Qualification of an expert witness is in the discretion of the trial judge based on the circumstances of each case.

Rules of Conduct for a Court Interpreter

The South Carolina Supreme Court promulgated Rules of Professional Conduct for Court Interpreters in Rule 511 SCACR, and those rules were effective on June 21, 2006. Under the rules of professional conduct, an interpreter is an officer of the court and helps to ensure that persons with English as a second language or with a speech or hearing impairment enjoy equal access to justice.

Confidentiality for Court Interpreters

Rule 5 of the Rules of Professional Conduct for Court Interpreters provides that interpreters shall protect the confidentiality of all privileged and other confidential information.

Sources of Information for Obtaining Interpreters for People with English as a Second Language

The Court Administration Division of the South Carolina Judicial Department maintains a list of qualified interpreters for court proceedings. The list is not published, but the Court Administration Division provides the list to the clerks of court in each judicial circuit.

Information on available interpreters may also be obtained from a Department of Social Services county, region or state program that provides direct client services and has designated a Client Special Services Coordinator (CSSC). The CSSC may have the names of interpreters located in the CSSC's area of responsibility. While the Department of Social Services may not be authorized to provide and pay for an interpreter or translator or for interpreter/translator services, the CSSCs may be a source of information concerning available interpreters.

Children's Advocacy Centers in South Carolina may have information concerning interpreters available in the geographic areas where the centers are located. The centers have a network and a web site (<http://www.cac-sc.org>) which has contact information for each center.

Victim and witness assistance offices in solicitors' offices or sheriffs' offices may have information concerning interpreters available within their jurisdictions.

Sources of Information for Obtaining Interpreters for People With a Hearing Impairment

Information on interpreters for people with a hearing impairment may be found on the web site of the South Carolina Association of the Deaf (scadservices.org; link to SC Interpreter Location). The South Carolina School for the Deaf may also have information (1-888-567-0980).

Information Resources on Using Interpreters for Interviewing Children

Using interpreters for interviewing children suspected of being abused or neglected involves a number of issues which must be considered in planning and conducting those interviews. The American Prosecution Research Institute is the research arm of the National District Attorneys Association and publishes *Update* newsletters which provide information for planning and conducting interviews of children. Those resources are available at www.ndaa.org/publications/newsletters/index and include:

(2006) Silent Voices: Preparing Deaf Children for Court, Update 19, No. 10

(2005) Key Factors in Forensic Interviews with Native American Children, Update 18, No. 6

(2005) Learning to Read the Signs: Prosecution Strategies for Child Abuse Cases with Deaf Victims and Witnesses, Update 18, No. 5

(2005) Investigations within Deaf Institutions: A Start-Up Guide for Law and Forensic Professionals, Update 18, No. 4

(2002) Cultural Sensitivity in the Forensic Interview Process, Update 15, No. 1

(2002) Using Interpreters in Forensic Interviews, Update 15, No. 12

(1998) Ten Tips on Using Court Interpreters In Child Witness Cases, Update 11, No. 12

Another useful resource on interviewing across cultures is the book, *Interviewing Clients Across Cultures*, by Lisa Aronson Fontes (The Guilford Press 2008). The chapter entitled “The Interpreted Interview” contains particularly useful information on using interpreters for interviews.

Selected Case Law on Interpreters

State v. Galloway, 284 S.E.2d 509 (N.C. 1981)(prosecution witness in rape case was deaf and mute and testified through an interpreter; court rejected defendant’s allegation that the witness’ testimony was not understandable and should have been stricken)

People v. Vandiver, 468 N.E.2d 454 (Ill. App. 1984)(court rejected defendant’s allegation that his Sixth Amendment right to confrontation was violated by use of two interpreters for testimony of prosecution witness who was deaf and mute)

Appendix of Statutes

S.C. Code Ann. § 15-27-15.

(A) Whenever a deaf person is a party or witness in any legal proceeding including, but not limited to, a civil or criminal proceeding, a family court proceeding, an action involving a traffic violation, or other criminal matter heard in magistrates court, or is confined to an institution, the court must appoint as many qualified interpreters or deaf relay interpreters as needed and are approved by the South Carolina Association of the Deaf. The interpreter must be approved by the deaf person and either the South Carolina Association of the Deaf and the South Carolina Registry of Interpreters for the Deaf or the National Registry of Interpreters for the Deaf to interpret the proceedings to and the testimony of the deaf person, unless the deaf person waives having a qualified interpreter, elects to use another individual of his own selection as his interpreter, or the judge finds that it is not necessary for the fulfillment of justice. If a person elects to use an interpreter other than a qualified interpreter provided for in this section, the court must first make a determination that this action is in the best interest of the individual and is in the best interests of justice. The selection, use, and reimbursement of interpreters must be determined under such guidelines as may be established by the Chief Justice of the Supreme Court. All fees for interpreting services must be paid out of the general fund of the State from funds appropriated to the Judicial Department for this purpose by the General Assembly.

(B) For purposes of this section:

(1) “Qualified interpreter” means a person eighteen years of age or older who has been certified by the South Carolina Association of the Deaf Interpreter Assessment Program (SCAD-IAP Level IV or V) or the National Registry of Interpreters for the Deaf and who has received approval from the South Carolina Association of the Deaf and who is not a family member of the deaf person.

(2) “Deaf person” means a person who cannot use his hearing for communication purposes.

(C) In an action where the mental condition of a deaf person is being considered and where the person may be committed to an institution, all the court proceedings pertaining to the person must be interpreted to the deaf person in a language that the person understands by a qualified interpreter appointed by the court.

S.C. Code Ann. § 15-27-155.

(A) Notwithstanding any other provision of law, whenever a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a

finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice.

(B) An “interpreter” means a person who:

- (1) is eighteen years of age or older;
- (2) is not a family member of the party or witness;
- (3) is an instructor of foreign language at an institution of education; or
- (4) has educational training or experience that enables him or her to fluently speak a foreign language and interpret the language of another person.

An “interpreter” shall not be a person confined to an institution.

(C)(1) The selection, use, and reimbursement of interpreters must be determined under such guidelines as may be established by the Chief Justice of the Supreme Court;

(2) The fees for interpreting services may be:

- (a) paid out of the general fund of the State from funds appropriated to the Judicial Department for this purpose by the General Assembly;
- (b) paid by one or more of the parties as the court may direct; or
- (c) taxed ultimately as costs based on the discretion of the court.

(D) The Division of Court Administration shall maintain a centralized list of qualified interpreters to interpret the proceedings to and testimony of a party or witness. A party or a witness is not precluded from using a qualified interpreter who is not on the centralized list as long as the interpreter meets the requirements of subsection (B) and submits a sworn affidavit to the court specifying his or her qualifications.

S.C. Code Ann. § 17-1-50.

(A) As used in this section:

(1) “Certified interpreter” means an interpreter who meets the standards contained in subitem (A)(4) and is certified by the administrative office of the United States courts, by the office of the administrator for the state courts, or by a nationally recognized professional organization.

(2) “Legal proceeding” means a proceeding in which a nonEnglish speaking person is a party or a witness.

(3) “NonEnglish speaking person” means a party or a witness participating in a legal proceeding who has limited ability to speak or understand the English language.

(4) “Qualified interpreter” means a person who:

- (a) is eighteen years of age or older;
- (b) is not a family member of a party or a witness;
- (c) is not a person confined to an institution; and
- (d) has education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English.

(5) “Victim” means a victim as defined in Section 16-3-1110.

(6) “Witness” means a person who testifies in a legal proceeding.

(B)(1) Notwithstanding any other provision of law, whenever a party, witness, or victim in a criminal legal proceeding does not sufficiently understand or speak the English language to comprehend the proceeding or to testify, the court must appoint a certified or otherwise qualified interpreter to interpret the proceedings to the party or victim or to interpret the testimony of the witness.

(2) However, the court may waive the use of a certified or otherwise qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a certified or otherwise qualified interpreter is requested by a non-English speaking party, witness, or victim in a legal proceeding; that the waiver has been made knowingly, voluntarily, and intelligently; and that granting the waiver is in the best interest of justice.

(C) The selection, use, and reimbursement of interpreters must be determined under such guidelines as may be established by the Chief Justice of the Supreme Court. All fees for interpreting services must be paid out of the general fund of the State from funds appropriated to the Judicial Department for this purpose by the General Assembly.

(D) The Division of Court Administration must maintain a centralized list of certified or otherwise qualified interpreters to interpret the proceedings to a party and testimony of a witness. A party or a witness is not precluded from using a qualified interpreter who is not on the centralized list as long as the interpreter meets the requirements of subitem (A)(4) and submits a sworn affidavit to the court specifying his qualifications or submits to a voir dire by the court.